

COPY *in opinion*

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~~State of New Hampshire~~
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August 23, 1954

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General Frank D. Merrill, Commissioner
Department of Public Works and Highways
State House Annex
Concord, New Hampshire

SEP 22 1998

CONCORD, N.H.

Dear General Merrill:

There are pending against The State of New Hampshire two appeals from awards made in connection with taking of land in the Nashua area for the Central New Hampshire Turnpike.

In one case it is claimed that approximately fifty-four acres not needed for actual right-of-way has been taken apparently upon the assumption that its isolation without access rendered its value negligible or worthless to the landowner "because he could never get to it." The owner objects to the taking of the land and places a high value upon it supported by expert opinion.

The other owner's tract involves some thirty acres similarly taken.

It is my opinion that section 2 of Part 7 of R.L. ch. 90 as inserted by ch. 196, Laws of 1945, does not authorize these takings of surplus land. That section of the law contemplates, and the Constitution requires, that if land is to be acquired, when then by agreement, such land must be "needed for the right-of-way proper" in the foreseeable future. Authority exists for acquisition of an entire lot, block or tract by negotiation and agreement with the owner if by so doing the interests of the public will be best served. However, a taking without the owner's consent or agreement must bear an appropriate relation to the highway right-of-way purposes.

In such cases the difference between the before and after value of the surplus tract left isolated is measured generally by what it would cost for the owner to acquire suitable access thereto although other factors might, of course, affect the before and after values so that the difference would not be precisely what would be indicated by that yardstick.

C O P Y

General Frank D. Merrill, Commissioner

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I recommend that the return or returns embracing these two takings be recommended by the Governor and Council to the successor commission to the commission which made these takings and awards, that the taking be reduced to what is needed for right-of-way and appropriate revision of before and after values of the entire tract be re-assessed and tendered and amended returns and certificates of tender filed.

Very truly yours,

George F. Nelson
Assistant Attorney General

GFN/aml

cc: Stanton C. Otis
Right-of-Way Engineer
Department of Public Works and Highways